



February 13, 2009

SENATE BILL No. 493

DIGEST OF SB 493 (Updated February 10, 2009 3:04 pm - DI 106)

Citations Affected: IC 4-21.5; IC 35-47; noncode.

Synopsis: Handgun license revocation procedures. Establishes a two-track procedure for the revocation or suspension of handgun licenses. Provides that, under the revocation track, the superintendent of the state police department may immediately suspend or revoke a person's handgun license based on: (1) the commission of certain crimes; (2) the fact that the person's license is already suspended; or (3) the person's age if the person is underage; if the superintendent has documented evidence supporting these facts. Authorizes judicial review of the superintendent's determination under the revocation track, and provides that the superintendent has the burden of proof in a judicial review proceeding. Provides that, under the suspension track, the superintendent may suspend a person's handgun license for a 90 day period (or longer if the person requests a continuance) if: (1) the superintendent has documented evidence that gives rise to a reasonable belief that the person has a propensity for violent or emotionally unstable conduct; or (2) the superintendent has other reasonable grounds to believe that the person's license should be suspended. Requires that the evidence relied upon by the superintendent be based on scientific, medical, technical, or other specialized evidence and be of sufficient reliability to be admissible under the Indiana rules of evidence. Specifies that the person's handgun license is automatically reinstated at the expiration of the suspension period unless the
(Continued next page)

Effective: July 1, 2009.

Waltz

January 15, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 12, 2009, amended, reported favorably — Do Pass.

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prosecuting attorney, before the expiration of the suspension period, files a petition to suspend or revoke the person's license, and requires the petition to contain a statement by a physician that, based on an examination or other information given to the physician, the person may have a propensity for violent or emotionally unstable conduct, or other reasonable grounds exist to suspend or revoke the person's license. Permits a person whose license is suspended or revoked to appeal or otherwise challenge the suspension or revocation. Provides that a person who knowingly or intentionally fails to return a license promptly after written notice of suspension or revocation commits a Class A misdemeanor. Makes other changes and conforming amendments. Repeals a superseded provision.

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February 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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SENATE BILL No. 493

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-21.5-5-14 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) **Except as**
3 **provided in IC 35-47-2-25(c)**, the burden of demonstrating the
4 invalidity of agency action is on the party to the judicial review
5 proceeding asserting invalidity.
6 (b) The validity of agency action shall be determined in accordance
7 with the standards of review provided in this section, as applied to the
8 agency action at the time it was taken.
9 (c) The court shall make findings of fact on each material issue on
10 which the court's decision is based.
11 (d) The court shall grant relief under section 15 of this chapter only
12 if it determines that a person seeking judicial relief has been prejudiced
13 by an agency action that is:
14 (1) arbitrary, capricious, an abuse of discretion, or otherwise not
15 in accordance with law;

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- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

SECTION 2. IC 35-47-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) A person who violates section 3, 4, ~~5~~, 14, 15, or 16 of this chapter commits a Class B misdemeanor.

(b) A person who violates section 7, 17, or 18 of this chapter commits a Class C felony.

(c) A person who violates section 1 of this chapter commits a Class A misdemeanor. However, the offense is a Class C felony:

- (1) if the offense is committed:
 - (A) on or in school property;
 - (B) within one thousand (1,000) feet of school property; or
 - (C) on a school bus; or
- (2) if the person:
 - (A) has a prior conviction of any offense under:
 - (i) this subsection; or
 - (ii) subsection (d); or
 - (B) has been convicted of a felony within fifteen (15) years before the date of the offense.

(d) A person who violates section 22 of this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior conviction of any offense under this subsection or subsection (c), or if the person has been convicted of a felony within fifteen (15) years before the date of the offense.

SECTION 3. IC 35-47-2-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25. (a) The superintendent immediately may suspend or revoke a license issued under this chapter if the superintendent has documented evidence that a person is prohibited under section 3(g)(5) of this chapter from being issued a license or is not a proper person to be licensed under:**

- (1) IC 35-47-1-7(1) (conviction for resisting law enforcement);**
- (2) IC 35-47-1-7(2) (conviction for a felony);**
- (3) IC 35-47-1-7(3) (conviction for a crime of domestic violence);**
- (4) IC 35-47-1-7(4) (prohibited by court order);**
- (5) IC 35-47-1-7(5) (alcohol or drug abuser);**
- (6) IC 35-47-1-7(7) (false statement of material fact on**

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handgun application);

(7) IC 35-47-1-7(8) (conviction related to unsafe use of a handgun);

(8) IC 35-47-1-7(9) (conviction related to violation of this article); or

(9) IC 35-47-1-7(10) (certain juvenile adjudications).

(b) If a license is suspended or revoked based solely on an arrest under section 3(g)(5) of this chapter, the license shall be reinstated upon the acquittal of the defendant in that case or upon the dismissal of the charges for the specific offense.

(c) A person whose license is suspended or revoked under subsection (a) may file a petition for judicial review in accordance with IC 4-21.5-5. In a petition for judicial review filed under this subsection, the superintendent bears the burden of proving that the suspension or revocation is valid. A court may stay the suspension or revocation of a license pending judicial review.

(d) At least three hundred sixty-five (365) days after the date the decision revoking or suspending the person's license under subsection (a) becomes final, the person may petition a circuit or superior court in the person's county of residence to order the superintendent to reinstate the person's license. Upon receipt of a petition filed under this subsection, the court shall:

(1) enter an order setting a hearing date; and

(2) inform the attorney general and the superintendent of the date, time, and location of the hearing.

(e) In a hearing under subsection (d), the superintendent must prove by a preponderance of the evidence that the person is:

(1) prohibited under section 3(g)(5) of this chapter from being issued a license; or

(2) not a proper person to be licensed under:

(A) IC 35-47-1-7(1) (conviction for resisting law enforcement);

(B) IC 35-47-1-7(2) (felony conviction);

(C) IC 35-47-1-7(3) (conviction for a crime of domestic violence);

(D) IC 35-47-1-7(4) (prohibited by court order);

(E) IC 35-47-1-7(5) (alcohol or drug abuser);

(F) IC 35-47-1-7(7) (false statement of material fact);

(G) IC 35-47-1-7(8) (conviction related to unsafe use of a handgun);

(H) IC 35-47-1-7(9) (conviction related to violation of this article); or

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1 (I) IC 35-47-1-7(10) (certain juvenile adjudications).
 2 (f) If, upon the completion of a hearing under subsection (d) and
 3 a consideration of the record, the court finds that the person is:
 4 (1) not prohibited under section 3(g)(5) of this chapter from
 5 being issued a license; and
 6 (2) a proper person to be licensed under:
 7 (A) IC 35-47-1-7(1) (conviction for resisting law
 8 enforcement);
 9 (B) IC 35-47-1-7(2) (felony conviction);
 10 (C) IC 35-47-1-7(3) (conviction for a crime of domestic
 11 violence);
 12 (D) IC 35-47-1-7(4) (prohibited by court order);
 13 (E) IC 35-47-1-7(5) (alcohol or drug abuser);
 14 (F) IC 35-47-1-7(7) (false statement of material fact);
 15 (G) IC 35-47-1-7(8) (conviction related to unsafe use of a
 16 handgun);
 17 (H) IC 35-47-1-7(9) (conviction related to violation of this
 18 article); or
 19 (I) IC 35-47-1-7(10) (certain juvenile adjudications);
 20 the court shall order the superintendent to reinstate the person's
 21 license.
 22 (g) If the court denies a person's petition under subsection (d),
 23 the person may not file a subsequent petition until at least three
 24 hundred sixty-five (365) days after the date the court denied the
 25 petition.
 26 (h) A person who knowingly or intentionally fails to return a
 27 license promptly after written notice of suspension or revocation
 28 commits a Class A misdemeanor. The observation of a handgun
 29 license in the possession of a person whose license has been
 30 suspended or revoked constitutes a sufficient basis for the arrest of
 31 that person for violation of this subsection.
 32 (i) The superintendent shall establish rules under IC 4-22-2
 33 concerning the procedure for suspending or revoking a person's
 34 license under this section.
 35 SECTION 4. IC 35-47-2-26 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2009]: Sec. 26. (a) The superintendent may suspend the license
 38 of a person for not more than ninety (90) days if the
 39 superintendent:
 40 (1) has documented evidence that gives rise to a reasonable
 41 belief that the person has a propensity for violent or
 42 emotionally unstable conduct; or

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(2) has reasonable grounds to believe that the person's license should be suspended or revoked; in accordance with this section.

(b) The superintendent may suspend a license under this section only if the evidence relied upon by the superintendent is:

(1) based on scientific, medical, technical, or other specialized evidence; and

(2) of sufficient reliability to be admissible under Indiana Evidence Rule 702(b).

(c) Upon the expiration of the suspension period described in subsection (a), a license suspended under this section shall be automatically reinstated unless, before the expiration of the suspension period:

(1) the prosecuting attorney of the county where the person whose license has been suspended resides:

(A) upon request of the chief of police or corresponding law enforcement officer of the municipality in which the person whose license was suspended resides;

(B) upon request of the county sheriff of the county in which the person whose license was suspended resides; or

(C) without having received a request from a person described in clause (A) or (B);

petitions a circuit or superior court in the county to suspend or revoke the license; and

(2) the court, following a hearing held in accordance with this section, authorizes the superintendent to suspend or revoke the license.

However, if the person whose license has been suspended requests and receives a continuance in a proceeding described under this subsection, the person's license will remain suspended until the conclusion of the proceeding, at which point the person's license will be reinstated, suspended, or revoked in accordance with the court's determination under subdivision (2).

(d) The prosecuting attorney may commence a proceeding to authorize the superintendent to suspend or revoke a license by filing a written petition with the court alleging that:

(1) the person has a propensity for violent or emotionally unstable conduct; or

(2) other reasonable grounds exist to suspend or revoke the person's license.

(e) The petition described in subsection (d) must contain a statement by a physician that, based on:

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1 (1) an examination; or
 2 (2) information given to the physician;
 3 the person may have a propensity for violent or emotionally
 4 unstable conduct, or other reasonable grounds exist to suspend or
 5 revoke the person's license.

6 (f) Not later than three (3) days after the prosecuting attorney
 7 files a petition under subsection (d), the court shall:

8 (1) enter an order setting a hearing date; and

9 (2) inform the:

10 (A) prosecuting attorney;

11 (B) superintendent; and

12 (C) person whose license was suspended;
 13 of the date, time, and location of the hearing.

14 (g) The hearing date set under subsection (f) must be at least
 15 two (2) days after the court's order and, if practicable, less than
 16 forty-five (45) days from the date on which the person's license was
 17 suspended.

18 (h) The court may appoint a physician to do the following:

19 (1) Examine the person.

20 (2) Report, before the hearing, the physician's opinion as to
 21 whether the person may have a propensity for violent or
 22 emotionally unstable conduct, or other reasonable grounds
 23 exist to suspend or revoke the person's license.

24 (i) If a report made under subsection (h) is that:

25 (1) the person does not have a propensity for violent or
 26 emotionally unstable conduct; and

27 (2) no other reasonable grounds exist to suspend or revoke the
 28 person's license;

29 the court may terminate the proceedings and order the
 30 superintendent to reinstate the person's license. Otherwise, the
 31 hearing must proceed as scheduled by the court.

32 (j) If, upon completion of the hearing and consideration of the
 33 record, the court finds that the prosecuting attorney has proved
 34 that the person has a propensity for violent or emotionally unstable
 35 conduct, or other reasonable grounds exist to suspend or revoke
 36 the person's license, the court shall authorize the superintendent to
 37 suspend or revoke the person's license. If the court finds that the
 38 person does not have a propensity for violent or emotionally
 39 unstable conduct, and that no other reasonable grounds exist to
 40 suspend or revoke the person's license, the court shall order the
 41 superintendent to reinstate the person's license. A determination
 42 under this subsection is a final appealable order.

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(k) A determination under subsection (j) that the person has a propensity for violent or emotionally unstable conduct, or that other reasonable grounds exist to suspend or revoke the person's license, must be based on evidence that is:

- (1) scientific, medical, technical, or otherwise specialized; and
- (2) of sufficient reliability to be admissible under Indiana Evidence Rule 702(b).

(l) At least three hundred sixty-five (365) days after a decision under subsection (j) becomes final, the person may petition the court to order the superintendent to reinstate the person's license. Upon receipt of a petition filed under this subsection, the court shall enter an order setting a hearing date and inform the prosecuting attorney and the superintendent of the date, time, and location of the hearing.

(m) In a hearing under subsection (l), the prosecuting attorney must prove by a preponderance of the evidence that:

- (1) the person has a propensity for violent or emotionally unstable conduct; or
- (2) other reasonable grounds exist to continue the suspension or revocation of the person's license.

(n) If, upon the completion of a hearing under subsection (l) and a consideration of the record, the court finds that:

- (1) the person does not have a propensity for violent or emotionally unstable conduct; and
- (2) no other reasonable grounds exist to continue the suspension or revocation of the person's license;

the court shall order the superintendent to reinstate the person's license.

(o) The granting or denial of a petition under subsection (l) is a final appealable order. If the court denies a person's petition under subsection (l), the person may not file a subsequent petition except in accordance with the periods established in subsection (l).

(p) A person who knowingly or intentionally fails to return a license promptly after written notice of suspension or revocation commits a Class A misdemeanor. The observation of a handgun license in the possession of a person whose license has been suspended or revoked constitutes a sufficient basis for the arrest of that person for violation of this subsection.

(q) The superintendent shall establish rules under IC 4-22-2 concerning the procedure for suspending or revoking a person's license under this section.

SECTION 5. IC 35-47-2-5 IS REPEALED [EFFECTIVE JULY 1,

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1 2009].

2 SECTION 6. [EFFECTIVE JULY 1, 2009] IC 35-47-2-25 and
3 IC 35-47-2-26, both as added by this act, apply only to crimes
4 committed after June 30, 2009.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 493, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 38, delete "forty-five (45)" and insert "**ninety (90)**".

Page 5, between lines 27 and 28, begin a new line blocked left and insert:

"However, if the person whose license has been suspended requests and receives a continuance in a proceeding described under this subsection, the person's license will remain suspended until the conclusion of the proceeding, at which point the person's license will be reinstated, suspended, or revoked in accordance with the court's determination under subdivision (2)."

and when so amended that said bill do pass.

(Reference is to SB 493 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 4.

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